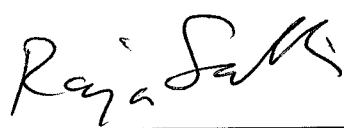


PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number Q92887	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	Filed	
	10/566,708	March 1, 2006	
	First Named Inventor		
	Arnaud HELIE		
	Art Unit	Examiner	
	3752	Trevor E. McGRAW	
<p>WASHINGTON OFFICE</p> <p>23373</p> <p>CUSTOMER NUMBER</p>			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal</p> <p>The review is requested for the reasons(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p><input checked="" type="checkbox"/> I am an attorney or agent of record. Registration number <u>43,078</u></p>			
		<p></p> <p>Signature</p>	
		<p>Raja N. Saliba</p> <p>Typed or printed name</p>	
		<p>(202) 293-7060</p> <p>Telephone number</p>	
		<p>March 5, 2009</p> <p>Date</p>	

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q92887

Arnaud HELIE, et al.

Appln. No.: 10/566,708

Group Art Unit: 3752

Confirmation No.: 8999

Examiner: Trevor E. McGRAW

Filed: March 1, 2006

For: SPRAY HEAD FOR LIQUID PRODUCT

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated September 5, 2008, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicants thank the Examiner and his Supervisor for the Interview conducted on March 3, 2009. Applicants also thank the Examiner for agreeing to withdraw the rejections of claims 1-16 under 35 U.S.C. § 112. As such, the only rejections currently at issue are the rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103.

During the interview, the Applicants' representative discussed the distinctions between the applied patents and the pending claims. The Examiner and his Supervisor agreed to reconsider the rejection in light of the arguments and recommended that the Applicants file a response setting forth the distinctions as discussed during the interview. Accordingly,

Applicants are filing this Pre-Appeal Brief Request containing Applicants' position as discussed during the interview. Applicants turn now to the rejections at issue:

I. Claim Rejections - 35 U.S.C. § 102(b)

Claims 1, 2, 4, 8, 10, 11, 12, 13, 14 and 16 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Garrigou (US 3,625,437). In rejecting claims 1, 2, 4, 8, 10, 11, 12, 13, 14 and 16 over Garrigou, the grounds of rejection state:

“Garrigou (3,625,437) teaches a fluid dispenser device . . . where the spray head (2) has an expulsion channel (13) with a spray orifice (14) and a spray profile (15,16,17) [and] where an insert (9) forms an internal nozzle . . .” (Office Action at page 3.)

Applicants respectfully disagree. The characterization of element 2 from Garrigou as a “spray head,” and element 9 from Garrigou as an “insert,” is improper.

“During patent examination, the pending claims must be ‘given their broadest reasonable interpretation consistent with the specification.’” MPEP § 2111. Moreover, “[t]he broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach.” MPEP § 2111. When properly interpreted, element 2 of Garrigou can not be a “spray head” and element 9 of Garrigou can not be an “insert.” First, such an interpretation would be inconsistent with the use of these terms in Garrigou itself. Second, this interpretation would be inconsistent with the use of these terms in the current application. And third, this interpretation would be inconsistent with how one skilled in the art would interpret these terms. As such, Garrigou can not properly nor fairly be interpreted as disclosing, or rendering obvious, the spray head or the insert as recited in independent claims 1 and 11 and their respective dependent claims.

Garrigou states that “[t]he spray head consists of two parts, namely a body part 1 and a nozzle insert 2.”

(Garrigou, col. 3, lines 31-32; *see* annotated Fig. 1 of

Garrigou, right.) The body 1 includes “[a] cylindrical pin 8

[with a] flat end surface 9.” (Garrigou, col. 3, lines 37-38.)

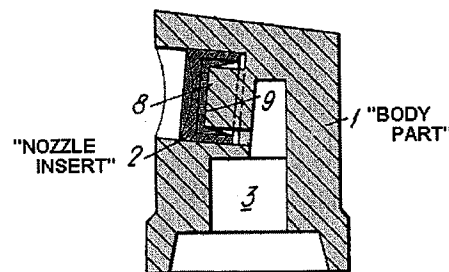


Fig. 1.

Thus, Garrigou defines element 2 as the nozzle insert whereas the Examiner characterizes element 2 as the spray head and Garrigou defines element 9 as an integral part of the body of the spray head, whereas the Examiner characterizes element 9 as the insert. Thus, the Examiner’s characterization of the terms “insert” and “spray head” is inconsistent with their use in Garrigou.

Moreover, the Examiner’s characterization of these terms is inconsistent with the specification of the current application. As noted above, claims must be “given their broadest reasonable interpretation consistent with the specification.” MPEP 2111. Independent claims 1 and 11 both recite the terms “spray head” and “insert.” The specification of the current application specifically discusses the Garrigou patent with regard to these terms:

“Fluid dispenser heads are well known [T]he head generally includes a spray profile disposed just upstream from the spray orifice. The spray profile can be formed by an external part, known as an external nozzle, fastened on the outside [of the spray head], as described in [Garrigou.] That solution presents the major drawback of a risk of said nozzle being expelled during use.” (Current Application, page 1, lines 3-11.)

Therefore, Applicants’ specification discusses and clearly distinguishes the current invention from the applied Garrigou patent. One having ordinary skill in the art would read the specification and come to only one conclusion: the terms “external nozzle” or “nozzle” refer to

element 2 of Garrigou and “spray head” refers to element 1 of Garrigou. This is because element 2 of Garrigou is the only part that is attached from an external portion of any other part and element 2 is the only part that is capable of being expelled during use. Elements 8 and 9 are part of and rigidly connected to the body 1 and are incapable of being expelled. Furthermore, Garrigou itself even refers to element 2 as the nozzle insert and element 1 as the body of the spray head. As such, the only possible reading of the above description is that element 2 of Garrigou is an external nozzle and element 1 is a spray head.

Furthermore, the current application provides that an alternative to the external nozzle in Garrigou is an insert on the inside of the head rather than on the outside. The current specification states, “[i]n order to mitigate [the] drawback [of the nozzle being expelled as in Garrigou], it is proposed to make the spray profile by means of an insert that is inserted into the head through the inside of said head.” (Current application, page 1, lines 11-16.) Thus, when claims 1 and 11 recite, “an . . . insert being introduced through the inside of the spray head and being disposed in said expulsion channel (5),” it can not be interpreted as being the external nozzle insert 2 of Garrigou. As such, Garrigou does not anticipate claims 1 or 11.

Additionally, as noted above, “[t]he broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach.” MPEP § 2111. The terms “spray head” and “insert” are commonly understood terms in the relevant art. It is well known that in a fluid dispenser, the spray head is assembled on a pump or valve, itself mounted on a reservoir. This is shown in all the prior art documents listed in the description showing external nozzle devices, and also in the internal nozzle devices, e.g. patent US

4,801,093. In fact, in Garrigou, it is explicitly described that the spray head 1 has a recess 3 for receiving "in a known manner" a valve stem. (Garrigou, col. 3, lines 33-35.) The nozzle insert 2 of Garrigou is not attached to a pump or a valve, nor mounted on a reservoir, and therefore one having ordinary skill in the art would not properly interpret element 2 as a spray head.

The Examiner's characterization of "insert" and "spray head" is overly broad and inconsistent with the cited prior art, the current application, and their customary usage. As such, Applicants submit that Garrigou does not anticipate claims 1 or 11 or their dependents.

II. Claim Rejections - 35 U.S.C. § 103(a)

Claims 3, 5-7, 9 and 15 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Garrigou (US 3,625,437) in view of Ennis, III (US 4,923,448). Applicants submit that claims 3, 5-7, 9 and 15 are allowable at least by virtue of their respective dependencies from independent claims 1 or 11.

III. Conclusion

For the reasons presented above, Applicant respectfully submits that the claims are patentable, and accordingly, that the final rejection is improper. Applicant respectfully requests the Panel to reverse the final rejection and allow the application with the pending claims.

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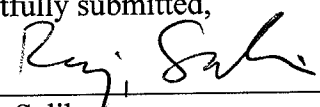
WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: March 5, 2009

Respectfully submitted,



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